

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

STIVAN SINGH,

Petitioner,

CASE NO. C06-892-RSM-MJB

V.

ALBERTO R. GONZALES, et al.,

REPORT AND RECOMMENDATION

Respondents.

I. INTRODUCTION AND SUMMARY CONCLUSION

On March 10, 2006, petitioner Stivan Singh, proceeding through counsel, filed a Petition for Writ of Habeas Corpus in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 2241, alleging that he is being held “indefinitely” by United States Immigration and Customs Enforcement (“ICE”), contrary to the mandate in *Zadvydas v. Davis*, 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001).¹ (Dkt. #14, Part 4). Petitioner requests that he be released from custody due to the unlikelihood of his removal from the United States in the reasonably foreseeable future. On June 23, 2006, petitioner’s

¹Petitioner also appears to seek mandamus relief and relief under the Declaratory Judgment Act and All Writs Act. (Dkt. #14, Part 4 at 2).

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1 habeas petition was transferred from the Northern District of California to this Court because
 2 petitioner is detained at the Northwest Detention Center in Tacoma, Washington. *See Rumsfeld*
 3 *v. Padilla*, 124 S. Ct. 2711, 2724 (2004)(holding that the district of confinement is the proper
 4 venue for a petition for writ of habeas corpus under 28 U.S.C. § 2241). On July 31, 2006,
 5 respondents moved to dismiss, arguing that petitioner's detention is lawful and not "indefinite."
 6 (Dkt. #20).

7 Having carefully reviewed the entire record, I recommend that petitioner's habeas
 8 petition (Dkt. #14, Part 4) be DENIED and that respondents' motion to dismiss (Dkt. #20) be
 9 GRANTED.

10 II. BACKGROUND AND PROCEDURAL HISTORY

11 Petitioner is a native and citizen of India. On April 25, 1998, he entered the United
 12 States at Brownsville, Texas, without inspection. (Dkt. #14, Part 4, Ex. A). On June 8, 1998,
 13 petitioner filed an application for asylum, alleging that he faced a well-founded fear of
 14 persecution in India on account of his religion and/or political opinion. (Dkt. #15, Ex. A). On
 15 July 14, 1998, the former Immigration and Naturalization Service² ("INS") served petitioner
 16 with a Notice to Appear ("NTA"), placing petitioner in removal proceedings and charging
 17 petitioner with removability as an alien present in the United States without being admitted or
 18 paroled in violation of Section 212(a)(6)(A)(i) of the Immigration and Nationality Act
 19 ("INA"), 8 U.S.C. § 1182(a)(6)(A)(i). (Dkt. #15, Ex. C). On July 20, 1998, the INS denied
 20 petitioner's application for asylum. (Dkt. #15, Ex. B).

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 24 ²Effective March 1, 2003, the Immigration and Naturalization Service was abolished
 25 pursuant to the Homeland Security Act of 2002, 116 Stat. 2135, Pub. L. 107-296, *codified at* 6
 U.S.C. §§ 101, *et seq.*, and its immigration functions were transferred to the Department of
 Homeland Security ("DHS").

1 In removal proceedings, petitioner admitted the factual allegations contained in the
2 NTA and conceded removability, but renewed his application for asylum and withholding of
3 removal. On April 16, 2001, following a hearing, an Immigration Judge (“IJ”) denied
4 petitioner’s application for asylum and withholding of removal, and ordered petitioner
5 removed to India. (Dkt. #15, Exs. S and T). Petitioner appealed the IJ’s decision to the Board
6 of Immigration Appeals (“BIA”). On December 23, 2002, the BIA affirmed, without opinion,
7 the IJ’s order of removal. (Dkt. #15, Ex. W). Thus, petitioner’s order of removal became
8 administratively final on December 23, 2002. On January 21, 2003, petitioner timely filed a
9 Petition for Review in the Ninth Circuit Court of Appeals, which was dismissed for lack of
10 jurisdiction on April 27, 2004. (Dkt. #15, Ex. X and Y). On July 9, 2004, the Ninth Circuit
11 denied petitioner’s petition for panel rehearing. (Dkt. #15, Ex. Z). The Ninth Circuit’s
12 mandate issued on July 19, 2004. (Dkt. #15, Ex. AA). On September 15, 2004, petitioner was
13 placed into the Intensive Supervision and Appearance Program (“ISAP”) in Portland, Oregon,
14 pending the issuance of a travel document. (Dkt. #14, Part 5, Ex. H).

15 On February 11, 2005, petitioner was taken into ICE custody as a travel document had
16 issued, facilitating his removal to India. (Dkt. #14, Part 5, Ex. H). On March 2, 2005, the day
17 petitioner was scheduled to be removed to India, petitioner filed an emergency Petition for
18 Writ of Habeas Corpus in the United States District Court for the Northern District of
19 California, and an emergency stay of removal was granted. *Id.* On March 3, 2005, petitioner
20 filed a motion to reopen with the BIA, alleging that he had received ineffective assistance of
21 counsel during his removal proceedings. (Dkt. #24 at 6). On April 18, 2005, the BIA issued a
22 decision denying petitioner’s motion to reopen his removal proceedings. (Dkt. #15, Ex. CC).
23 On May 2, 2005, petitioner filed a Petition for Review of the BIA’s decision in the Ninth
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1 Circuit. (Dkt. #15, Ex. DD). The Ninth Circuit issued an automatic stay of removal, and
2 thereafter extended the stay *pendente lite*. On May 11, 2005, the U.S. District Court for the
3 Northern District of California granted the parties' stipulation to dismiss the habeas petition
4 based on the BIA's denial of petitioner's motion to reopen and petitioner's pending petition for
5 review. Petitioner's petition for review is currently pending in the Ninth Circuit.

6 On March 10, 2006, petitioner filed the instant Petition for Writ of Habeas Corpus in
7 the U.S. District Court for the Northern District of California, challenging the lawfulness of his
8 continued detention. (Dkt. #14). On June 19, 2006, District Judge Jeffrey S. White signed a
9 stipulated Order transferring the case to the Western District of Washington. (Dkt. #14). On
10 July 31, 2006, respondents filed their return and motion to dismiss. (Dkt. #20). On September
11 6, 2006, petitioner filed his response. (Dkt. #24). On September 9, 2006, respondents filed a
12 reply. (Dkt. #22). The habeas petition and motion to dismiss are now ready for review.
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14 III. DISCUSSION

15 A. Detention

16 Petitioner argues that he is being held indefinitely, in violation of *Zadvydas v. Davis*,
17 533 U.S. 678, 121 S. Ct. 2491, 150 L. Ed. 2d 653 (2001), and that he must be released because
18 there is no significant likelihood that he will be removed in the reasonably foreseeable future.
19 (Dkt. #14, Part 4). Respondents argue that petitioner's reliance on *Zadvydas* is misplaced
20 because his 90-day removal period under INA § 241(a)(1)(A) has not expired, and even if
21 petitioner's removal period has expired, it is significantly likely that he will be removed in the
22 reasonably foreseeable future. (Dkt. #20 at 8-9).

23 The post-removal-order detention statute, INA § 241(a)(1), 8 U.S.C. § 1231(a)(1),
24 provides for the mandatory detention of aliens awaiting removal from the United States for an
25 initial period of three months. This three months may be followed by an additional three months

1 discretionary detention during which detention remains presumptively valid. *Zadvydas*, 533
 2 U.S. at 701. In *Zadvydas*, the Supreme Court explained that after this six-month period, the
 3 alien is eligible for conditional release upon demonstrating that there is “no significant
 4 likelihood of removal in the reasonably foreseeable future.” *Id.* The petitioner has the burden of
 5 coming forward with “good reason to believe there is no reasonable likelihood of removal in the
 6 reasonably foreseeable future.” *Id.* If the petitioner meets this burden, the government must
 7 produce sufficient evidence to rebut petitioner’s showing. *Id.*

8 Here, petitioner’s claim that he is being held indefinitely in violation of *Zadvydas* lacks
 9 merit because he has not demonstrated that his removal to India is not significantly likely in the
 10 reasonably foreseeable future. *See Zadvydas* at 701. As indicated in the record, ICE has already
 11 obtained a travel document to India and the only thing preventing his removal is his Petition for
 12 Review and related stay of removal. Once the Ninth Circuit decides his appeal, ICE will remove
 13 or release petitioner. *See Bequir v. Clark*, Case No. 05-1587-RSM-JPD (Dkt. #23 at 3). Thus,
 14 contrary to the petitioner in *Zadvydas*, petitioner’s detention is neither “indefinite” nor
 15 “potentially permanent.” *Zadvydas*, 533 U.S. at 690-91. Accordingly, petitioner’s detention
 16 complies with the mandate in *Zadvydas*.³

17 B. 8 C.F.R. § 241.4

20 ³Respondents also argue that *Zadvydas* is not applicable because “either the removal
 21 period has not yet begun – or else it has been stayed by operation of law upon the Ninth
 22 Circuit’s issuance of a stay of removal *pendente lite*.” (Dkt. #22 at 1). The Court disagrees.
 23 Petitioner’s order of removal became administratively final on December 23, 2002, with the
 24 BIA’s dismissal of his appeal. *See INA § 101(47)(B), 8 U.S.C. § 1101(47)(B)*. The removal
 25 period was then stayed because the removal order was judicially reviewed and the Ninth
 26 Circuit issued a stay of removal. *INA § 241(a)(1)(B)(ii)*. However, the Ninth Circuit
 dismissed the appeal per the mandate issued on July 19, 2004. Thus, the removal period began
 on July 19, 2004, the 90-day removal period expired on October 19, 2004, and the six-month
 presumptively reasonable removal period expired on January 19, 2005.

1 In his habeas petition, petitioner alleges in conclusory fashion that respondents arbitrarily
2 denied his request for release from detention by “failing to consider all of the factors enumerated
3 within the government’s own regulation under 8 C.F.R. § 241.4,” and by not providing him an
4 “individual assessment.” (Dkt. #14, Part 4 at 5). This claim fails because petitioner does not
5 specify what factors respondents failed to consider or how they failed to give him an individual
6 assessment.

IV. CONCLUSION

8 For the foregoing reasons, I recommend that respondent's motion to dismiss be granted,
9 and that the action be dismissed with prejudice. A proposed Order accompanies this Report
10 and Recommendation.

DATED this 15th day of November, 2006.



MONICA J. BENTON
United States Magistrate Judge